

By

Harris

S.J.R. No. 46

A JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance to  
2 be fixed on homestead property for a debt of a spouse resulting  
3 from a division or award of a homestead in a divorce proceeding and  
4 for the refinance of a lien against a homestead.

5 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 50, Article XVI, Texas Constitution, is  
7 amended to read as follows:

8 Sec. 50. The homestead of a family, or of a single adult  
9 person, shall be, and is hereby protected from forced sale, for the  
10 payment of all debts except for the purchase money thereof, or a  
11 part of such purchase money, the taxes due thereon, a debt of one  
12 spouse in favor of the other spouse resulting from a division or an  
13 award of a family homestead in a divorce proceeding, the refinance  
14 of a lien against a homestead, including a federal tax lien  
15 resulting from the tax debt of both spouses, if the homestead is a  
16 family homestead, or from the tax debt of the owner, or for work  
17 and material used in constructing improvements thereon, and in this  
18 last case only when the work and material are contracted for in  
19 writing, with the consent of both spouses, in the case of a family  
20 homestead, given in the same manner as is required in making a sale  
21 and conveyance of the homestead; nor may the owner or claimant of  
22 the property claimed as homestead, if married, sell or abandon the  
23 homestead without the consent of the other spouse, given in such  
24 manner as may be prescribed by law. No mortgage, trust deed, or

1 other lien on the homestead shall ever be valid, except for a debt  
2 described by this section [~~the--purchase--money--therefor,--or~~  
3 ~~improvements-made-thereon,--as-hereinbefore-provided~~], whether such  
4 mortgage, or trust deed, or other lien, shall have been created by  
5 the owner alone, or together with his or her spouse, in case the  
6 owner is married. All pretended sales of the homestead involving  
7 any condition of defeasance shall be void. A purchaser or lender  
8 for value without actual knowledge may conclusively rely on an  
9 affidavit that designates other property as the homestead of the  
10 affiant and that states that the property to be conveyed or  
11 encumbered is not the homestead of the affiant [~~This--amendment~~  
12 ~~shall-become-effective-upon-its-adoption~~].

13 SECTION 2. This proposed constitutional amendment shall be  
14 submitted to the voters at an election to be held November 7, 1995.  
15 The ballot shall be printed to permit voting for or against the  
16 proposition: "The constitutional amendment permitting an  
17 encumbrance to be fixed on homestead property for a debt of a  
18 spouse resulting from a division or award of a homestead in a  
19 divorce proceeding and for the refinance of a lien against a  
20 homestead."

## BILL ANALYSIS

Senate Research Center

S.J.R. 46  
By: Harris  
Jurisprudence  
3-31-95  
As Filed

### BACKGROUND

Historically, Texans have been able to secure third party financing to satisfy federal taxes secured by a lien perfected against their homestead. Federal law provides that a lien will attach to real estate of the taxpayer, regardless of whether that property is exempt under state law. Texans in the past have frequently partitioned their homestead property in divorce proceedings or separate agreements by transferring the homestead to one spouse or cotenant and imposing a lien against the entire property to secure the owelty of partition. This practice was recognized as a valid means of encumbering the homestead and facilitated the availability of third party financing.

Recent litigation in state and bankruptcy courts has cast doubt on the validity of a lien on homestead securing refinancing of federal tax debt and of an owelty lien on the entire property. Without clarification of the law on refinancing of federal tax liens, taxpayers may be unable to pay their tax debt and face the possibility of the loss of their homestead. Without clarification of the effect of an agreement on financing of a partition of the homestead, the agreement in divorce and cotenant partitions to partition the homestead by sale to one of the owners will not be adequately secured by a lien on the full homestead; consequently, the spouse who retains a lien will face further expenses and the other spouse will not be able to secure third party financing to satisfy this debt.

### PURPOSE

As proposed, S.J.R. 46 requires the submission to the voters of a constitutional amendment authorizing an encumbrance to be fixed on a homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, to include in the list of debts for which a homestead may be sold forcibly the payment of a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding, the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner. Authorizes a purchaser or lender for value without actual knowledge to rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant. Deletes a provision requiring this amendment to become effective upon its adoption. Makes a conforming change.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 7, 1995. Sets forth the required language for the ballot.

1 By: Harris S.J.R. No. 46  
2 (In the Senate - Filed March 8, 1995; March 14, 1995, read  
3 first time and referred to Committee on Jurisprudence;  
4 April 19, 1995, reported adversely, with favorable Committee  
5 Substitute by the following vote: Yeas 4, Nays 0; April 19, 1995,  
6 sent to printer.)

7 COMMITTEE SUBSTITUTE FOR S.J.R. No. 46 By: Harris

8 SENATE JOINT RESOLUTION

9 proposing a constitutional amendment permitting an encumbrance to  
10 be fixed on homestead property for an owelty of partition and the  
11 refinance of a lien against a homestead.

12 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

13 SECTION 1. Section 50, Article XVI, Texas Constitution, is  
14 amended to read as follows:

15 Sec. 50. The homestead of a family, or of a single adult  
16 person, shall be, and is hereby protected from forced sale, for the  
17 payment of all debts except for the purchase money thereof, or a  
18 part of such purchase money, the taxes due thereon, an owelty of  
19 partition imposed against the entirety of the property designated  
20 as a homestead by a court order or by a written agreement of the  
21 parties to the partition, including a debt of one spouse in favor  
22 of the other spouse resulting from a division or an award of a  
23 family homestead in a divorce proceeding, the refinance of a lien  
24 against a homestead, including a federal tax lien resulting from  
25 the tax debt of both spouses, if the homestead is a family  
26 homestead, or from the tax debt of the owner, or for work and  
27 material used in constructing improvements thereon, and in this  
28 last case only when the work and material are contracted for in  
29 writing, with the consent of both spouses, in the case of a family  
30 homestead, given in the same manner as is required in making a sale  
31 and conveyance of the homestead; nor may the owner or claimant of  
32 the property claimed as homestead, if married, sell or abandon the  
33 homestead without the consent of the other spouse, given in such  
34 manner as may be prescribed by law. No mortgage, trust deed, or  
35 other lien on the homestead shall ever be valid, except for a debt  
36 described by this section [the--purchase--money--therefor,---or  
37 improvements--made--thereon,--as--hereinbefore--provided], whether such  
38 mortgage, or trust deed, or other lien, shall have been created by  
39 the owner alone, or together with his or her spouse, in case the  
40 owner is married. All pretended sales of the homestead involving  
41 any condition of defeasance shall be void. A purchaser or lender  
42 for value without actual knowledge may conclusively rely on an  
43 affidavit that designates other property as the homestead of the  
44 affiant and that states that the property to be conveyed or  
45 encumbered is not the homestead of the affiant [This-amendment  
46 shall-become-effective-upon-its-adoption].

47 SECTION 2. This proposed constitutional amendment shall be  
48 submitted to the voters at an election to be held November 7, 1995.  
49 The ballot shall be printed to permit voting for or against the  
50 proposition: "The constitutional amendment permitting an  
51 encumbrance to be fixed on homestead property for an owelty of  
52 partition, including a debt of a spouse resulting from a division  
53 or award of a homestead in a divorce proceeding, and for the  
54 refinance of a lien against a homestead, including a federal tax  
55 lien resulting from the tax debt of the owner."

56 \* \* \* \* \*

FAVORABLY AS SUBSTITUTED  
SENATE COMMITTEE REPORT ON

SB SCR SJR SR HB HCR HJR 46  
By Harris  
(Author/Senate Sponsor)  
4-19-95  
(date)

We, your Committee on JURISPRUDENCE, to which was referred the attached measure,  
have on 4-18-95, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

- ☒ do pass as substituted, and be printed  
( ) the caption remained the same as original measure  
( ) the caption changed with adoption of the substitute  
( ) do pass as substituted, and be ordered not printed

☒ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ( ) no  
A revised fiscal note was requested. ☒ yes ( ) no  
An actuarial analysis was requested. ( ) yes ( ) no  
Considered by subcommittee. ( ) yes ( ) no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Don Henderson, Chair	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
Senator Royce West, Vice-Chair	<input checked="" type="checkbox"/>			
Senator David Cain	<input checked="" type="checkbox"/>			
Senator Chris Harris	<input checked="" type="checkbox"/>			
Senator Greg Luna			<input checked="" type="checkbox"/>	
Senator Jim Turner			<input checked="" type="checkbox"/>	
Senator Jeff Wentworth	<input checked="" type="checkbox"/>			
TOTAL VOTES	<u>4</u>		<u>3</u>	

COMMITTEE ACTION

S260 Considered in public hearing  
S270 Testimony taken

Beck, Gregg  
COMMITTEE CLERK

Don Henderson  
CHAIRMAN

Paper clip the original and one copy of this signed form to the original bill along with TWO copies of the Committee Substitute  
Retain one copy of this form for Committee files

## BILL ANALYSIS

Senate Research Center

C.S.S.J.R. 46

By: Harris

Jurisprudence

4-19-95

Committee Report (Substituted)

### BACKGROUND

Historically, Texans have been able to secure third party financing to satisfy federal taxes secured by a lien perfected against their homestead. Federal law provides that a lien will attach to real estate of the taxpayer, regardless of whether that property is exempt under state law. Texans in the past have frequently partitioned their homestead property in divorce proceedings or separate agreements by transferring the homestead to one spouse or cotenant and imposing a lien against the entire property to secure the owelty of partition. This practice was recognized as a valid means of encumbering the homestead and facilitated the availability of third party financing.

Recent litigation in state and bankruptcy courts has cast doubt on the validity of a lien on homestead securing refinancing of federal tax debt and of an owelty lien on the entire property. Without clarification of the law on refinancing of federal tax liens, taxpayers may be unable to pay their tax debt and face the possibility of the loss of their homestead. Without clarification of the effect of an agreement on financing of a partition of the homestead, the agreement in divorce and cotenant partitions to partition the homestead by sale to one of the owners will not be adequately secured by a lien on the full homestead; consequently, the spouse who retains a lien will face further expenses and the other spouse will not be able to secure third party financing to satisfy this debt.

### PURPOSE

As proposed, C.S.S.J.R. 46 requires the submission to the voters of a constitutional amendment authorizing an encumbrance to be fixed on a homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, to include in the list of debts for which a homestead may be sold forcibly an owelty of partition imposed against the entirety of the property designated as a homestead by a court order or by a written agreement of the parties to the partition, including the payment of a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding, the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner. Authorizes a purchaser or lender for value without actual knowledge to rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant. Deletes a provision requiring this amendment to become effective upon its adoption. Makes a conforming change.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 7, 1995. Sets forth the required language for the ballot.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**74th Regular Session**

April 17, 1995

TO: Honorable Don Henderson, Chair  
Committee on Jurisprudence  
Senate  
Austin, Texas

IN RE: Senate Joint Resolution  
No. 46  
By: Harris, Chris

FROM: John Keel, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 46 (proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated other than the cost of publication of the resolution. The cost to the state for publication of the resolution is \$90,000.

Source: Savings and Loan Department, Department of Banking, Office of the Consumer Credit  
Commissioner  
LBB Staff: JK, VS, RR

NOTE

Subject: (BILL NO.) WITNESS - JURISPRUDENCE  
Revised: WITNESS FORM  
74th Legislature

COMMITTEE: Jurisprudence  
BILL: SJR 46

DATE: 04 18 95

	FOR	AGAINST	ON
Name: Gayle Vickers			
Representing: TX Bankers Assn.			
City: Austin, TX	x	-	-
Name: John F. Rothermel, III			
Representing: TLTA/Alamo Title			
City: San Antonio, TX	x	-	-
Name: Randy M. Lee			
Representing: Stewart Title Guaranty Co.			
City: Austin, TX	x	-	-
Name: Jim Gosdin			
Representing: Stewart Title Guaranty Co.			
City: Houston, TX	x	-	-
Name: Robert Sneed			
Representing: Texas Land Title Assn.			
City: Austin, TX	x	-	-
Name:			
Representing:			
City:	-	-	-
Name:			
Representing:			
City:	-	-	-
Name:			
Representing:			
City:	-	-	-
Name:			
Representing:			
City:	-	-	-
Name:			
Representing:			
City:	-	-	-
Name:			
Representing:			
City:	-	-	-

### PART OF ###

<<<<===== END OF FORM =====>>>>



By : HARRIS

S.J.R. No. 46

Substitute the following for S.J.R. No. 46 :

By : HARRIS

C.S. S.J.R. No. 46

SENATE

JOINT RESOLUTION

proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition and the refinance of a lien against a homestead.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended to read as follows:

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4-19-95

4-20-95

5-26-95/10 (D.H.A.)

2nd

1 homestead without the <sup>1</sup>/<sub>2</sub> consent of the other spouse, given in such  
2 manner as may be prescribed by law. No mortgage, trust deed, or  
3 other lien on the homestead shall ever be valid, except for a debt  
4 described by this section [~~the--purchase--money--therefor,---or~~  
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6 mortgage, or trust deed, or other lien, shall have been created by  
7 the owner alone, or together with his or her spouse, in case the  
8 owner is married. All pretended sales of the homestead involving  
9 any condition of defeasance shall be void. A purchaser or lender  
10 for value without actual knowledge may conclusively rely on an  
11 affidavit that designates other property as the homestead of the  
12 affiant and that states that the property to be conveyed or  
13 encumbered is not the homestead of the affiant [~~This-amendment~~  
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20 partition, including a debt of a spouse resulting from a division  
21 or award of a homestead in a divorce proceeding, and for the  
22 refinance of a lien against a homestead, including a federal tax  
23 lien resulting from the tax debt of the owner."

April 21 1995 Engrossed  
Hatsy Shaw  
Engrossing Clerk

95 APR 25 PM 5:23

HOUSE OF REPRESENTATIVES

I certify that this document is a true  
and correct copy of the engrossed Senate  
measure as it was received from the Senate  
and referred to the Committee on

Financial Institutions  
Cynthia Schubert  
Chief Clerk of the House

By: Harris  
(Cook)

S.J.R. No. 46

SENATE JOINT RESOLUTION

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21 or award of a homestead in a divorce proceeding, and for the  
22 refinance of a lien against a homestead, including a federal tax  
23 lien resulting from the tax debt of the owner."

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE  
74th Regular Session**

April 19, 1995

TO: Honorable Don Henderson, Chair  
Committee on Jurisprudence  
Senate  
Austin, Texas

IN RE: Committee Substitute  
for Senate Joint Resolution  
No. 46

FROM: John Keel, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 46 (Proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition and the refinance of a lien against a homestead.  
) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$90,000.

Source: LBB Staff: JK, BR, RR  
Saving and Loan Department, Department of Banking, Office of Consumer Credit Commissioner

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**74th Regular Session**

April 17, 1995

TO: Honorable Don Henderson, Chair  
Committee on Jurisprudence  
Senate  
Austin, Texas

IN RE: Senate Joint Resolution  
No. 46  
By: Harris, Chris

FROM: John Keel, Director

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Source: Savings and Loan Department, Department of Banking, Office of the Consumer Credit  
Commissioner  
LBB Staff: JK, VS, RR

# HOUSE COMMITTEE REPORT

1<sup>st</sup> Printing

By: Harris  
(Cook)

S.J.R. No. 46

## SENATE JOINT RESOLUTION

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2 be fixed on homestead property for an owelty of partition and the  
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24 the property claimed as homestead, if married, sell or abandon the

homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for a debt described by this section [~~the--purchase--money--therefor,---or improvements--made--thereon,--as--hereinbefore--provided~~], whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant [~~This-amendment shall-become-effective-upon-its-adoption~~].

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 1995. The ballot shall be printed to permit voting for or against the proposition: "The constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition, including a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding, and for the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of the owner."



# COMMITTEE REPORT

The Honorable Pete Laney  
Speaker of the House of Representatives

5/1/95  
(date)

Sir:

We, your Committee on Financial Institutions

to whom was referred SSR 46 have had the same under consideration and beg to report back with the recommendation that it

- ☒ do pass, without amendment.  
☐ do pass, with amendment(s).  
☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

- ☒ yes ☐ no A fiscal note was requested.  
☐ yes ☒ no A criminal justice policy impact statement was requested.  
☐ yes ☒ no An equalized educational funding impact statement was requested.  
☐ yes ☒ no An actuarial analysis was requested.  
☐ yes ☒ no A water development policy impact statement was requested.

☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor Cook

Joint Sponsors \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Marchant, Ch.	<input checked="" type="checkbox"/>			
Carona, V.C.	<input checked="" type="checkbox"/>			
Elkins	<input checked="" type="checkbox"/>			
Giddings			<input checked="" type="checkbox"/>	
Grusendorf				<input checked="" type="checkbox"/>
Gutierrez	<input checked="" type="checkbox"/>			
Hudson				<input checked="" type="checkbox"/>
Patterson	<input checked="" type="checkbox"/>			
Romo				<input checked="" type="checkbox"/>

Total 5 aye  
0 nay  
1 present, not voting  
3 absent

P. Marchant  
CHAIRMAN

## BILL ANALYSIS

Financial Institutions Committee  
S.J.R. 46  
By: Harris, Chris (Cook)  
May 1, 1995  
Committee Report (Unamended)

### BACKGROUND

Historically, Texans have been able to secure third party financing to satisfy federal taxes secured by a lien perfected against their homestead. Federal law provides that a lien will attach to real estate of the taxpayer, regardless of whether that property is exempt under state law. Texans in the past have frequently partitioned their homestead property in divorce proceedings or separate agreements by transferring the homestead to one spouse or cotenant and imposing a lien against the entire property to secure the owelty of partition. This practice was recognized as a valid means of encumbering the homestead and facilitated the availability of third party financing.

Recent litigation in state and bankruptcy courts has cast doubt on the validity of a lien on homestead securing refinancing of federal tax debt and of an owelty lien on the entire property. Without clarification of the law on refinancing of federal tax liens, taxpayers may be unable to pay their tax debt and face the possibility of the loss of their homestead. Without clarification of the effect of an agreement on financing of a partition of the homestead, the agreement in divorce and cotenant partitions to partition the homestead by sale to one of the owners will not be adequately secured by a lien on the full homestead; consequently, the spouse who retains a lien will face further expenses and the other spouse will not be able to secure third party financing to satisfy this debt.

### PURPOSE

As proposed, S.J.R. 46 requires the submission to the voters of a constitutional amendment authorizing an encumbrance to be fixed on a homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, to include in the list of debts for which a homestead may be sold forcibly an owelty of partition imposed against the entirety of the property designated as a homestead by a court order or by a written agreement of the parties to the partition, including the payment of a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding, the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner. Authorizes a purchaser or lender for value without actual knowledge to rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant. Deletes a provision requiring this amendment to become effective upon its adoption. Makes a conforming change.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 7, 1995. Sets forth the required language for the ballot.

### SUMMARY OF COMMITTEE ACTION

The committee considered SJR 46 in a formal meeting on May 1, 1995.

The bill was reported favorably without amendments, with the recommendation that it do pass and be printed, by a record vote of: 5 Ayes, 0 Nays, 1 PNV, 3 Absent.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**74th Regular Session**

**May 1, 1995**

**TO: Honorable Kenny Marchant, Chair**  
**Committee on Financial Institutions**  
**House of Representatives**  
**Austin, Texas**

**IN RE: Senate Joint Resolution**  
**No. 46, as engrossed**  
**By: Harris, Chris**

**FROM: John Keel, Director**

In response to your request for a Fiscal Note on Senate Joint Resolution No. 46 (proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition and the refinance of a lien against a homestead) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$90,000.

**Source: LBB Staff: JK, RR**

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**74th Regular Session**

**April 19, 1995**

**TO: Honorable Don Henderson, Chair**  
**Committee on Jurisprudence**  
**Senate**  
**Austin, Texas**

**IN RE: Committee Substitute**  
**for Senate Joint Resolution**  
**No. 46**

**FROM: John Keel, Director**

In response to your request for a Fiscal Note on Senate Joint Resolution No. 46 (Proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for an owelty of partition and the refinance of a lien against a homestead.  
) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated, other than the cost of publication.

The cost to the state for publication of the resolution is \$90,000.

Source: LBB Staff: JK, BR, RR  
Saving and Loan Department, Department of Banking, Office of Consumer Credit Commissioner

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**74th Regular Session**

April 17, 1995

**TO:** Honorable Don Henderson, Chair  
Committee on Jurisprudence  
Senate  
Austin, Texas

**IN RE:** Senate Joint Resolution  
No. 46  
By: Harris, Chris

**FROM:** John Keel, Director

In response to your request for a Fiscal Note on Senate Joint Resolution No. 46 (proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead) this office has determined the following:

No fiscal implication to the State or units of local government is anticipated other than the cost of publication of the resolution. The cost to the state for publication of the resolution is \$90,000.

**Source:** Savings and Loan Department, Department of Banking, Office of the Consumer Credit  
Commissioner  
LBB Staff: JK, VS, RR

MAY 23 1995

LIST OF HOUSE AMENDMENTS CONSIDERED

SJR46.2n - Second Reading

<u>AMENDMENT #</u>	<u>AUTHOR</u>	<u>DESCRIPTION</u>	<u>ACTION</u>
1	Cook	Amendment	Adopted



Floor Amendment No. 1

By Cook

1 Amend S.J.R. 46 as follows:

2 (1) On page 1, lines 11 and 12 between "property" and "by", strike "designated as a  
3 homestead".

see memo  
5/26/95

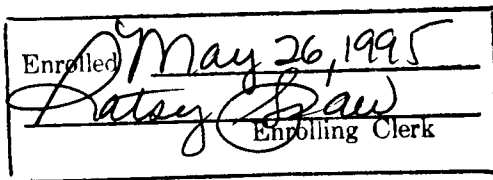
ADOPTED

MAY 23 1995

Cynthia G. Gifford  
Chief Clerk  
House of Representatives

House Am. # 1  
5-26-95





S.J.R. No. 46

SENATE JOINT RESOLUTION

1 proposing a constitutional amendment permitting an encumbrance to  
2 be fixed on homestead property for an owelty of partition and the  
3 refinance of a lien against a homestead.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 50, Article XVI, Texas Constitution, is  
6 amended to read as follows:

7 Sec. 50. The homestead of a family, or of a single adult  
8 person, shall be, and is hereby protected from forced sale, for the  
9 payment of all debts except for the purchase money thereof, or a  
10 part of such purchase money, the taxes due thereon, an owelty of  
11 partition imposed against the entirety of the property by a court  
12 order or by a written agreement of the parties to the partition,  
13 including a debt of one spouse in favor of the other spouse  
14 resulting from a division or an award of a family homestead in a  
15 divorce proceeding, the refinance of a lien against a homestead,  
16 including a federal tax lien resulting from the tax debt of both  
17 spouses, if the homestead is a family homestead, or from the tax  
18 debt of the owner, or for work and material used in constructing  
19 improvements thereon, and in this last case only when the work and  
20 material are contracted for in writing, with the consent of both  
21 spouses, in the case of a family homestead, given in the same  
22 manner as is required in making a sale and conveyance of the  
23 homestead; nor may the owner or claimant of the property claimed as  
24 homestead, if married, sell or abandon the homestead without the

1 consent of the other spouse, given in such manner as may be  
2 prescribed by law. No mortgage, trust deed, or other lien on the  
3 homestead shall ever be valid, except for a debt described by this  
4 section [~~the-purchase-money-therefor,--or-improvements-made-thereon,~~  
5 ~~as-hereinbefore-provided~~], whether such mortgage, or trust deed, or  
6 other lien, shall have been created by the owner alone, or together  
7 with his or her spouse, in case the owner is married. All  
8 pretended sales of the homestead involving any condition of  
9 defeasance shall be void. A purchaser or lender for value without  
10 actual knowledge may conclusively rely on an affidavit that  
11 designates other property as the homestead of the affiant and that  
12 states that the property to be conveyed or encumbered is not the  
13 homestead of the affiant [~~This--amendment--shall--become--effective~~  
14 ~~upon-its-adoption~~].

15 SECTION 2. This proposed constitutional amendment shall be  
16 submitted to the voters at an election to be held November 7, 1995.  
17 The ballot shall be printed to permit voting for or against the  
18 proposition: "The constitutional amendment permitting an  
19 encumbrance to be fixed on homestead property for an owelty of  
20 partition, including a debt of a spouse resulting from a division  
21 or award of a homestead in a divorce proceeding, and for the  
22 refinance of a lien against a homestead, including a federal tax  
23 lien resulting from the tax debt of the owner."

ll 6  
S.J.R. No. 46

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.J.R. No. 46 was adopted by the Senate on April 21, 1995, by the following vote: Yeas 28, Nays 0; and that the Senate concurred in House amendment on May 26, 1995, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.J.R. No. 46 was adopted by the House, with amendment, on May 23, 1995, by the following vote: Yeas 136, Nays 5, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

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 President of the Senate

---

 Speaker of the House

I hereby certify that S.J.R. No. 46 was adopted by the Senate on April 21, 1995, by the following vote: Yeas 28, Nays 0; and that the Senate concurred in House amendment on May 26, 1995, by the following vote: Yeas 31, Nays 0.

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 Secretary of the Senate

I hereby certify that S.J.R. No. 46 was adopted by the House, <sup>with amendment,</sup> on May 23, 1995, by the following vote: Yeas 136, Nays 5, two present not voting.

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 Chief Clerk of the House

## BILL ANALYSIS

Senate Research Center

S.J.R. 46  
By: Harris  
Jurisprudence  
6-7-95  
Enrolled

### BACKGROUND

Historically, Texans have been able to secure third party financing to satisfy federal taxes secured by a lien perfected against their homestead. Federal law provides that a lien will attach to real estate of the taxpayer, regardless of whether that property is exempt under state law. Texans in the past have frequently partitioned their homestead property in divorce proceedings or separate agreements by transferring the homestead to one spouse or cotenant and imposing a lien against the entire property to secure the owelty of partition. This practice was recognized as a valid means of encumbering the homestead and facilitated the availability of third party financing.

Recent litigation in state and bankruptcy courts has cast doubt on the validity of a lien on homestead securing refinancing of federal tax debt and of an owelty lien on the entire property. Without clarification of the law on refinancing of federal tax liens, taxpayers may be unable to pay their tax debt and face the possibility of the loss of their homestead. Without clarification of the effect of an agreement on financing of a partition of the homestead, the agreement in divorce and cotenant partitions to partition the homestead by sale to one of the owners will not be adequately secured by a lien on the full homestead; consequently, the spouse who retains a lien will face further expenses and the other spouse will not be able to secure third party financing to satisfy this debt.

### PURPOSE

As enrolled, S.J.R. 46 requires the submission to the voters of a constitutional amendment authorizing an encumbrance to be fixed on a homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead.

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SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 7, 1995. Sets forth the required language for the ballot.

S.J.R. No. 46

By Harris

Proposing a constitutional amendment permitting an encumbrance to be fixed on homestead property for a debt of a spouse resulting from a division or award of a homestead in a divorce proceeding and for the refinance of a lien against a homestead.

MAR 8 1995

Filed with the Secretary of the Senate

MAR 14 1995

Read and referred to Committee on JURISPRUDENCE

Reported favorably \_\_\_\_\_

APR 19 1995

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed

Laid before the Senate

APR 21 1995

Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

APR 21 1995

Read second time, \_\_\_\_\_, and ordered engrossed by: { unanimous consent  
a viva voce vote  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays

APR 21 1995

Senate and Constitutional 3 Day Rule suspended by a vote of 28 yeas, 0 nays.

APR 21 1995

Read third time, \_\_\_\_\_, and passed by: 28 yeas, 0 nays

Betty King  
SECRETARY OF THE SENATE

OTHER ACTION:

APR 21 1995

Engrossed

4-24-95

Sent to House

Engrossing Clerk

Lacey Spaw

APR 24 1995

Received from the Senate

APR 25 1995

Read first time and referred to Committee on FINANCIAL INSTITUTIONS

5-1-95

Reported \_\_\_\_\_ favorably (~~as amended~~) (~~as substituted~~).

MAY 03 1995

Sent to Committee on Calendars

MAY 23 1995

Read second time (~~comm. subst.~~) (amended) and adopted (~~passed to third reading~~) by a record vote of 136 yeas, 5 nays, 2 present, not voting

Read third time (amended) and finally adopted (failed of adoption) by a record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting

MAY 24 1995

Returned to Senate.

Cynthia Gerhardt  
CHIEF CLERK OF THE HOUSE

Returned from House without amendment.

MAY 24 1995

Returned from House with 1 amendments.

MAY 26 1995

Concurred in House amendments by a ~~viva voce vote~~ 31 yeas, 0 nays.

